

# Equitable Distribution

Managing Complex ED Cases from Start to Finish

Retired Judge Sue Burch

Judge Jena Culler

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## Six areas of Management

1. Scheduling Conference and Pretrial Conferences
2. Pre-trial Motions
3. Final Pre-trial Order
4. Trial
5. Decision
6. Order

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## Scheduling Conference and Pretrial Conferences

- NCGS 50-21 sets forth timelines
- Use form orders to discover issues that need addressing and schedule time to address those issues as needed
- Sample Forms
- Pretrial conferences start to allow for triaging complex cases and allow for setting follow up status conferences for the complex cases
- Consider at a status conference whether bifurcating a complex issue and handling it first will be helpful and agreeable to the parties

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## Pre-trial Motions

- TROs and Injunctions
- Interim Distribution
- Compel Discovery
- Add 3<sup>rd</sup> party defendants
- Return of Separate Property
- Determine DOS (if not addressed already addressed at a hearing set at a conference)

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## Final Pretrial Order

- Good format makes your life easier
- It is your roadmap for the trial
- Sample forms
- Discuss how to complete with attorneys in advance to get consistency
- Give attorneys a deadline to have the FPTO filed and delivered to you in advance of trial
- Conference with attorneys a few days in advance of trial to get preview of the factual/legal issues
- Get an extra hard copy and an electronic copy for your use

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## Trial

- Time management – set the rules before you start
- Order of presentation of evidence -discuss a plan with the attorneys
- Opening Statements
- Mantra – Classify, Value, Distribute
- Tips for taking and organizing your notes
- Recordings of the court proceedings
- Immediately after trial – Voice Recorder tip

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## Decision

- Determine the best place to start
- Do one item at the time and document your findings and result for each item so you can easily give your whole decision when you are done
- Fill in your FPTO as you make your decisions
- Distribute to who's name the item is in whenever possible
- FPTO in Excel is valuable tool for you to organize and turn into summary of (Exhibit to) your decision
- When you have classified, valued, and distributed everything, then look at your bottom line
- Go over the distribution factors and determine "equal is equitable" or "equal is not equitable"
- Determine if distributive award necessary to effectuate equitable distribution
- Remember 6 years from divorce IRS rule

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## Order

- Assign preparer and deadline and follow up on the deadline
- Determine how disagreements to the form of the order are to be presented to you
- Your spreadsheet and notes as you made your decision can help in streamlining the order
- Consider practical implications and wording

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